STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 30, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: **CC Docket No. 96-45, Opposition to MCI Petition And Reply Comments by California**

Dear Ms. Salas:

Enclosed please find an original and five copies of the OPPOSITION TO MCI PETITION AND REPLY COMMENTS BY CALIFORNIA in the above-referenced docket.

Also enclosed is one additional copy of this document. Kindly file-stamp this copy and return it to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter. If you have any questions, I can be reached at (415) 703-2047.

Sincerely,

Ellen S. LeVine
Attorney for California

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ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Petition for Declaratory Ruling that Carriers May Assess Interstate Customers an Interstate Universal Service Charge Which is Based on Total Revenues.	CC Docket No. 96-45

OPPOSITION TO MCI PETITION AND REPLY COMMENTS BY CALIFORNIA

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Dated: April 30, 1998

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OPPOSITION TO MCI PETITION
AND REPLY COMMENTS BY CALIFORNIA

The People of the State of California and the Public Utilities Commission of the State of California ("California") hereby file this opposition to the petition of MCI Telecommunications Corporation ("MCI") to the extent that MCI seeks to recover from its customers a federal universal service surcharge calculated on the basis of intrastate as well as interstate revenues for funding the high cost and low-income support mechanisms. As discussed below, while the Federal Communications Commission ("FCC") adopted the Federal-State Joint Board's recommendation to allow carriers of interstate services to assess both their interstate and intrastate revenues for funding universal service support mechanisms for schools, libraries, and rural health care providers, the FCC explicitly declined to allow carriers to assess their intrastate as well as interstate revenues for funding

the high cost and low-income support mechanisms. In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 62 Fed Reg. 32862 (June 17, 1997) ("Universal Service Order") at ¶¶ 808, 831. In failing to distinguish the revenue base underlying the funding of these two support mechanisms, MCI's petition is contrary to the FCC's Universal Service Order.

California further agrees with the Virginia Commission that MCI's petition is also contrary to the FCC's decision not to allow carriers to recover in intrastate rates the intrastate portion of their contribution to federal universal support mechanisms for schools, libraries, and rural health care. By charging all of its residential and business customers a monthly "Federal Universal Service Fee" to recoup its intrastate contribution to federal programs, MCI has done exactly what the FCC has proscribed. MCI has also acted in derogation of state regulatory authority over intrastate rates.

As more fully discussed below, MCI's petition should be denied.

ARGUMENT

I. MCI MAY NOT ASSESS BOTH INTERSTATE AND INTRASTATE REVENUES IN DETERMINING THE REVENUE BASE FOR THE HIGH COST AND LOW-INCOME UNIVERSAL SERVICE SUPPORT MECHANISMS

In its Universal Service Order, the FCC asked and answered the very question posed by MCI – whether to assess interstate and intrastate revenues for the purpose of determining the revenue base for the high cost and low-income

universal service support mechanisms. Universal Service Order at ¶ 808. Squarely rejecting the position that MCI asserts here, the FCC unequivocally decided to "assess contributions for [such] mechanisms *based solely on interstate revenues.*" Id. at ¶ 831 (emphasis added). See also id. at ¶ 268 ("we have determined to assess contributions for the universal service support mechanisms for rural, insular, and high cost areas solely from interstate revenues") and ¶ 824 ("we will assess and permit recovery of contributions to the rural, insular, and high cost and low-income support mechanisms based only on interstate revenues.") In doing so, the FCC explained that its determination, like its approach to cost recovery issues, would "promote comity between the federal and state governments." Id. at ¶ 831. The FCC also stated that its assessment approach was "warranted because the states presently are reforming their own universal service programs" which will determine whether additional federal support is required. Id. Citing the Federal-State Joint Board's conclusion that the assessment issue needed to be coordinated with issues concerning forward-looking cost mechanisms and appropriate revenue benchmarks, and acknowledging that the latter issues had yet to be resolved, the FCC further determined that it would be "premature to assess contributions on intrastate as well as interstate revenues. Id. at ¶ 832. The FCC specifically indicated that it would "seek further guidance on this subject from the Joint Board." Id. at ¶ 824.

For all of these reasons, the FCC concluded that "it is in the public interest to proceed to assess only interstate revenues while a unified federal-state approach is developed for the high cost and low-income support mechanisms." Id. See also ¶ 809 (same). The FCC then went on to describe procedurally how the assessment on "interstate end-user telecommunications revenues" would work. Id. at ¶ 833.

In its petition, MCI fails to recognize the distinction which the FCC drew between assessment of revenues for federal support mechanisms governing schools, libraries and rural health care providers, and assessment of revenues for federal mechanisms governing high cost and low-income programs. MCI is thus simply wrong when it claims that the FCC "did not specifically address the issue of whether carriers could fund their universal service contributions through their federal tariffs based on customers' combined intrastate, interstate, and international revenues." Petition at 5. The FCC carefully considered and rejected the position that MCI advocates here with respect to high cost and low-income programs, and MCI offers no sound policy reason for the FCC to reverse itself. Consistent with the FCC's expressed intent to maintain the historical federal-state partnership in implementing the universal service responsibilities of the Telecommunications Act of 1996, the FCC should deny MCI's petition.

II. MCI MAY NOT SEEK RECOVERY IN INTRASTATE RATES OF THE INTRASTATE PORTION OF ITS CONTRIBUTION TO FEDERAL UNIVERSAL SERVICE SUPPORT MECHANISMS FOR SCHOOLS, LIBRARIES AND RURAL HEALTH CARE PROVIDERS

MCI's intent to recover its contribution to the federal universal service support mechanisms for schools, libraries and rural health care providers by unilaterally creating a single monthly rate paid by MCI's residential and other subscribers is both contrary to the FCC's Universal Service Order, and contrary to law. In certain states, MCI apparently has assessed a flat percentage "Federal Universal Service Fee," or rate, against a customer's total bill for both interstate and intrastate toll usage. The amount the customer pays varies with intrastate billings and effectively increases intrastate rates. In this way, MCI has sought to recover the intrastate portion of the revenue contribution that MCI is required to make to these federal mechanisms through intrastate rates, rather than confining its recovery to interstate rates.

By such action, MCI has done precisely what the FCC expressly proscribed – namely, recover through intrastate rates the intrastate portion of its federal universal service contribution. In its Universal Service Order, the FCC made clear that:

> "We have determined to continue our historical approach ... to permit carriers to *recover contributions to universal service support mechanisms through rates for interstate services only*.. In discussing recovery we

> are referring to the process by which carriers' recoup the amount of their contributions to universal service."

Universal Service Order at ¶ 826 (emphasis added).

The FCC in particular explained that

> "[a]s with the recovery of the amount carriers contribute to the high cost and low-income support mechanisms, we have decided to permit recovery of contributions for the support mechanisms for eligible schools, libraries, and rural health care providers *solely via rates for interstate services.* Indeed, our rationale is even more compelling for the support mechanisms for eligible schools, libraries and rural health care providers because those mechanisms will be supported based upon both intrastate and interstate revenues, and, therefore, there is a heightened concern that carriers would recover the portion of their intrastate contributions attributable to intrastate services through increases in rates for basic residential dialtone service, contrary to the affordability principle contained in section 254(b)(1). Therefore, *carriers may recover these contributions solely through rates for interstate services,* in the same manner that they will recover their contributions to the high cost and low-income support mechanisms..."

Universal Service Order at ¶ 838 (emphasis added).

While couched as an "interstate fee," MCI has in fact imposed an intrastate rate to recover MCI's costs for the federal program– an action that is expressly precluded by the FCC's Universal Service Order. To be sure, MCI is free to assess its federal universal service rate to its customers' interstate services in order to recoup the intrastate contribution to federal support mechanisms for schools, libraries and rural health care providers. What MCI may not do, as it has done

here, is unilaterally impose a monthly charge on its customers applicable to both interstate and intrastate service without the prior consent of the appropriate state regulatory commission governing charges for intrastate service.[1]

Specifically, a single "interstate" fee assessed on residential customers that recoups MCI's intrastate contribution to the federal universal service support mechanisms is functionally no different than an increase in the intrastate rates for basic residential customers. Whether the rate is separately stated, or is folded into MCI's intrastate rate is immaterial. In either case, a residential customer of MCI will pay this rate each month to enable MCI to recover its intrastate costs regardless of whether the customer places any interstate toll calls. In California, most toll calls by residential customers are intrastate, yet, contrary to the FCC's Universal Service Order, these customers will be compelled to pay higher intrastate rates to enable MCI to recoup federally-incurred costs. The FCC should deny MCI's petition to continue this unlawful practice.

MCI's unilateral imposition of this intrastate rate is also precluded by law. Notwithstanding MCI's reliance on the FCC's claims that it may refer carriers to seek an increase in their intrastate rates to recover their intrastate contribution to federal universal service support mechanisms, such claim is contrary to Section

[1] For example, if a customer's monthly bill is $100 in interstate calls and $50 in intrastate calls, MCI could only assess its percentage rate against the interstate calls. Admittedly, this percentage rate may be higher than if MCI were able to assess both interstate and intrastate revenues.

152(b) of the Communications Act of 1934, and Section 601(c) of the Telecommunications Act of 1996 ("Telecom Act of 1996") which fence off from FCC reach intrastate rate regulation. 47 U.S.C. §§ 152(b), 601(c); Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355 (1986). Nothing in Section 254 or elsewhere in the Telecom Act of 1996 expressly and unequivocally allows the FCC to override the jurisdictional bar of Section 152(b). The FCC thus may neither directly nor indirectly assign federally-incurred costs to the intrastate jurisdiction for recovery by a carrier in intrastate rates.

In any event, the FCC made clear that even if the FCC had adopted its "referral" approach to recovery of a carrier's intrastate contribution to federal universal service mechanisms (which the FCC has not), carriers nevertheless would be required to seek permission from the appropriate state commission before they could recoup in intrastate rates their intrastate contribution to federal universal service support mechanisms. Universal Service Order at ¶ 821(under the FCC approach, if adopted, the FCC "would still be referring the matter to the states' authority over changes in intrastate rates..."). MCI has sought no such permission in those states where it has imposed its charge, and hence its action is unlawful.

CONCLUSION

For the reasons stated, MCI's petition should be denied.

Respectfully submitted,

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April 30, 1998

CERTIFICATE OF SERVICE

I, Ellen S. LeVine, hereby certify that on this 30th day of April, 1998, a true and correct copy of the foregoing OPPOSITION TO MCI PETITION AND REPLY COMMENTS BY CALIFORNIA was mailed first class, postage prepaid to all known parties of record.

ELLEN S. LEVINE